Supreme Court, U.S.
FILED
NOV 2 8 2005
OFFICE OF THE CLERK

No. 04-9728

In the
Supreme Court of the United States

October Term, 2005

DONALD CURTIS SAMSON,
Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

ON WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL,
FIRST APPELLATE DISTRICT

BRIEF AMICI CURIAE of AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE and THE NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF RESPONDENT.

(List of Counsel on Inside Front Cover)

Of Counsel:

GENE VOEGTLIN, ESQ.
International Association of
Chiefs of Police, Inc.
515 North Washington St.
Alexandria, Virginia 22312

RICHARD WEINTRAUB, ESQ.
National Sheriffs' Association
1450 Duke Street
Alexandria, Virginia 22314

BERNARD J. FARBER, ESQ.
1126 West Wolfram Street
Chicago, Illinois 60657-4430

Counsel for Amici Curiae:

WAYNE W. SCHMIDT, ESQ.
Executive Director
Americans for Effective
Law Enforcement, Inc.
841 West Touhy Avenue
Park Ridge, Illinois
60068-3351
Email: AELE@aol.com

JAMES P. MANAK, ESQ.
Counsel of Record
421 Ridgewood Avenue
Suite 100
Glen Ellyn, Illinois
60137-4900
Tele/Fax: (630) 858-6392
Email: lelp@xnet.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

BRIEF OF *AMICI CURIAE* 1

INTEREST OF *AMICI CURIAE* 1

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 4

ARGUMENT

THE FOURTH AMENDMENT DOES NOT PROHIBIT A LAW ENFORCEMENT OFFICER FROM CONDUCTING A WARRANTLESS SEARCH OF A PAROLEE WHEN THERE IS NO SUSPICION OF CRIMINAL WRONGDOING, AND THE SOLE REASON FOR THE SEARCH IS THAT THE PERSON IS ON PAROLE. 4

CONCLUSION 9

TABLE OF AUTHORITIES

Cases **Page**

Ewing v. California, 538 U.S. 11 (2003) 5
Griffin v. Wisconsin, 487 U.S. 868 (1987) 6
Penn. Bd. of Prob. and Parole v. Scott, 524 U.S. 357 (1998) 6
People v. Reyes, 19 Cal. 4th 743, 80 Cal.Rptr.2d 734, 968 P.2d 445 (1998) 6
People v. Samson, 2004 Cal.App. Unpub. LEXIS 9304, 2004 WL 2307111 (Cal.App. 1 Dist. 2004) 4
Schneckloth v. Bustamonte, 412 U.S. 218 (1973) 7
Terry v. Ohio, 392 U.S. 1 (1968) 6
United States v. Knights, 534 U.S. 112 (2001) 6

Constitution

U.S. Const. Amend. IV ..... *passim*

Record of Suppression Hearing

Record at Pages 21-22 3
Record at Page 28 3
Record at Page 34 3
Record at Page 36 3

Reports and Periodicals

Glaze and Palla, PROBATION AND PAROLE IN THE UNITED STATES, 2004 (NCJ-210676), Bureau of Justice Statistics, Department of Justice, available at: www.ojp.usdoj.gov/bjs/abstract/ppus04.htm 5
Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C.L. Rev. 255 (2004) 5, 6, 7

BRIEF OF *AMICI CURIAE*

This brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondent. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.[1]

INTEREST OF *AMICI CURIAE*

Americans for Effective Law Enforcement, Inc., (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various state and federal constitutions.

AELE has previously appeared as *amicus curiae* over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

---

[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This brief was authored for the *amici* by James P. Manak, Esq., counsel of record, and Wayne W. Schmidt, Esq., Executive Director of Americans for Effective Law Enforcement, Inc. No other persons authored this brief. Americans for Effective Law Enforcement, Inc. made the complete monetary contribution to the preparation and submission of this brief, without financial support from any source, directly or indirectly.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world. Founded in 1893, the IACP, with more than 20,000 members in 101 countries, is the world's oldest and largest association of police executives. IACP's mission, throughout the history of the association, has been to identify, address and provide solutions to urgent law enforcement issues.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

Amici are national associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of interacting with and overseeing the activities of parolees; and (2) police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters, including the formulation and implementation of training and policy on the subject.

Because of the relationship with our members and the composition of our membership and directors, including active law enforcement administrators and counsel, we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

STATEMENT OF THE CASE

A police officer saw the petitioner walking down a street with a woman and baby. He recognized petitioner from a prior contact involving an arrest for an "incident" with petitioner's girlfriend. He also knew that petitioner was on parole. At the time of the prior contact petitioner had said the "police weren't going to take me back to prison." Suppression Hearing (S.H.) 34.

Being "under the impression that he might have a parolee at large warrant," the officer asked to speak with petitioner. He asked him if a parole warrant was outstanding against him. Petitioner replied that "he had already taken care of it. And he was released from custody." S.H. 21-22.

The officer radioed his dispatcher and was told that petitioner was on parole but that the warrant was no longer outstanding. The officer then searched petitioner for the stated reason that "it's a condition of his parole. I believe that being [a] parolee, that he needs to make sure he's still obeying the laws." S.H. 28. The officer added that if a "parolee or person [is] subject to [a] search and seizure [condition], I would search them. . . ." S.H. 36.

The petitioner was under a condition of parole whereby he had agreed to be subject to search and seizure by a parole officer or police officer at any time of the night or day, with or without a search warrant and with or without cause. This type of condition is automatic in the State of California for parolees. The condition in question is common in many states.

As a result of the search the officer found a cigarette box in petitioner's pocket which contained a plastic baggie holding methamphetamine and petitioner was placed under arrest. His motion to suppress the evidence was denied and he was

convicted and sentenced to prison, based on this conviction and a prior felony conviction.

The conviction was affirmed by the California Court of Appeal, *People v. Samson*, 2004 Cal.App. Unpub. LEXIS 9304, 2004 WL 2307111 (Cal.App. 1 Dist. 2004) and further review was denied by the Supreme Court of California. (Cal. 2005).

SUMMARY OF ARGUMENT

Amici take the position that the conduct of the law enforcement officer in this case was proper under the Fourth Amendment. We submit that as a matter of law and sound policy, parolees should be subject to warrantless searches without reasonable suspicion so long as these searches are not arbitrary, capricious or done in a harassing manner.

Speaking from our unique experience in the criminal justice system involving day-to-day contact with parolees, we submit that this is necessary for the rehabilitation of parolees, the protection of the public, and the protection of law enforcement officers who interact with parolees.

ARGUMENT

THE FOURTH AMENDMENT DOES NOT PROHIBIT A LAW ENFORCEMENT OFFICER FROM CONDUCTING A WARRANTLESS SEARCH OF A PAROLEE WHEN THERE IS NO SUSPICION OF CRIMINAL WRONGDOING, AND THE SOLE REASON FOR THE SEARCH IS THAT THE PERSON IS ON PAROLE.

Amici will not repeat the legal arguments put forward by the respondent in this case; we do, however, support them.

As national representatives of law enforcement officers, administrators and legal advisors, we wish to inform the Court

of the following policy considerations from our professional perspective:

- Recidivism rates for ex-offenders are very high, a fact recognized by this Court in *Ewing v. California*, 538 U.S. 11, 26 (2003). In fact,

  > [T]he majority of ex-offenders released from prison reoffend. [A] study of recidivism conducted by the Bureau of Justice Statistics showed that eleven states accounted for 57% of all state prison releases in 1983. Of those prisoners released in 1983, 63% were rearrested at least once for a felony or serious misdemeanor.

  Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C.L. Rev. 255, at 259 (2004).
  In the report, Glaze and Palla, PROBATION AND PAROLE IN THE UNITED STATES, 2004 (NCJ-210676), compiled by the federal Bureau of Justice Statistics, Department of Justice, the overall success rate for parolees was only 46% in 2004.

- There is a pressing societal and law enforcement need for close and effective supervision and surveillance of parolees. As noted by Thompson:

  > The problem posed by inmates being released from prison and struggling to make successful transitions is not science fiction. Nor is it new. What is new, though, is the scale of the current problem. The United States has commenced the largest multi-year discharge of prisoners from state and federal custody in history. This release is a direct consequence of the explosion in incarceration that this country endorsed and experienced over the last two decades.

  Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C.L. Rev. 255, at 256 (2004).

- Law enforcement officers—including parole officers—are in the best position to conduct surveillance and evaluative activities on paroleees.

- Given the unique position of such officers the broadest possible investigative powers must be given to them, consistent with constitutional limitations. The Court has recognized this in cases such as: *Griffin v. Wisconsin*, 487 U.S. 868 (1987); *Penn. Bd. of Prob. and Parole v. Scott*, 524 U.S. 357 (1998) (*amici* filed a brief in *Scott* taking the position that the exclusionary rule is not applicable in parole revocation proceedings); and *United States v. Knights*, 534 U.S. 112 (2001).

- States such as California have recognized this need and have by statute given officers the right to search parolees without cause. This has been approved by the Supreme Court of California without a *Terry v. Ohio*, 392 U.S. 1 (1968), threshold requirement of reasonable suspicion. *People v. Reyes*, 19 Cal. 4th 743, 80 Cal.Rptr.2d 734, 968 P.2d 445 (1998).

- Using a balancing of interests test and considering the special status of parolees, *amici* submit that such a procedure comports with the Fourth Amendment.

- The procedure additionally serves the purpose of protecting the public and law enforcement officers in their interaction with parolees.

- The procedure also promotes the rehabilitation of parolees and aids in their reintegration into society by assuring that parolees do not engage in illegal conduct and therefore do not recidivate. As noted by Thompson, ". . . Individuals placed on parole generally must be released to the county where they resided before incarceration. Thus, offenders overwhelmingly return to poor, geographically isolated,

inner-city neighborhoods." Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C.L. Rev. 255, at 267 (2004).

- And finally, such a procedure comports with this Court's precedent in Fourth Amendment consent and waiver jurisprudence. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

- Convicted persons have only a statutory right to parole, a right that is discretionary with parole authorities. Parole authorities traditionally condition this grant of privilege upon restrictions and terms that parolees agree to. One of those conditions is an agreement that parolees submit to searches. While these conditions vary in detail from state-to-state, they are in the nature of a contract between the state and the parolee.

- As noted, in the context of the Fourth Amendment a search condition constitutes a consent to search, a waiver by the parolee of a warrant, probable cause and reasonable suspicion. From the parolee's point of view the waiver of rights in a reasonable step to achieving a limited degree of freedom; from the states' point of view the waiver is necessary to effectively carry out programs of supervision and rehabilitation of the parolee. The parolee has the special status of being, in effect, a prisoner with the privilege of limited freedom outside the walls of prison. With that privilege goes a host of restrictions, rules, limitations, restraints and supervision.

- Such waiver of rights, however, does not include the Fourth Amendment requirement of reasonableness. California has prudently recognized this by requiring suspicionless searches of parolees to be conducted in such a manner as to not be arbitrary, capricious or constitute harassment. This is a fact-bound element of the Fourth Amendment reasonableness requirement and both the trial court and the

appellate court reached the conclusion that the search in this case *was* reasonable, *i.e.*, not arbitrary, capricious or conducted in a harassing manner.[2]

Based on these considerations *amici* submit that the search in question was: (1) necessary to achieve the legitimate objectives of the state; (2) appropriate under a balancing of interests of the state and the parolee; (3) protective of the safety of the public and law enforcement officers; (4) effective in promoting the goals of the parole system; and (5) faithful to the Fourth Amendment jurisprudence of this Court concerning consent, waiver and reasonableness. We ask the Court to affirm the decision of the court below, and in so doing, clarify this area of Fourth Amendment jurisprudence for law enforcement administrators and officers.

---

[2] Law enforcement administrators and officers are mindful of their relations with the community and *amici* do not advocate as a practice the questioning of individuals as to whether they are on probation or parole without articulable reason to do so.

CONCLUSION

Amici urge this Court to uphold the constitutionality of the law enforcement conduct involved in this case on the law and as a matter of sound judicial policy.

Respectfully submitted,

Of Counsel:

GENE VOEGTLIN, ESQ.
International Association of Chiefs of Police, Inc.
515 North Washington St.
Alexandria, Virginia 22312

RICHARD WEINTRAUB, ESQ.
National Sheriffs' Association
1450 Duke Street
Alexandria, Virginia 22314

BERNARD J. FARBER, ESQ.
1126 West Wolfram Street
Chicago, Illinois 60657-4430

Counsel for Amici Curiae:

WAYNE W. SCHMIDT, ESQ.
Executive Director
Americans for Effective Law Enforcement, Inc.
841 West Touhy Avenue
Park Ridge, Illinois 60068-3351
Email: AELE@aol.com

JAMES P. MANAK, ESQ.
Counsel of Record
421 Ridgewood Avenue
Suite 100
Glen Ellyn, Illinois 60137-4900
Tele/Fax: (630) 858-6392
Email: lelp@xnet.com